IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

WP(C).No. 15473 of 2007(P)

PETITIONER:

A.P.HAREESH, S/O LATE S.ANANTHARAMA IYER, AGED 51 YEARS, WORKING AS ZILLA SAINIK WELFARE OFFICE, WAYANAND, RESIDING AT A.P.SATHAN, CHAMPAYIL, NEYYATTINKARA, THIRUVANANTHAPURAM.

BY ADV. SRI.M.R.RAJENDRAN NAIR (SR.)
SRI.NIDHI BALACHANDRAN

RESPONDENTS:

1. **STATE OF KERALA REPRESENTED BY SECRETARY TO GOVERNMENT OF KERALA, DEPARTMENT OF GENERAL, ADMINISTRATION,(SAINIK WELFARE), THIRUVANANTHAPURAM.**

2. **THE DIRECTOR, DIRECTORATE OF SAINIK WELFARE, VIKAS BHAVAN, THIRUVANANTHAPURAM.**

3. **THE PUBLIC SERVICE COMMISSION, REPRESENTED BY ITS SECRETARY, PATTOM, THIRUVANANTHAPURAM.**

BY GOVERNMENT PLEADER SRI. NANDAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE COMMUNICATION NO.7459/SW2/98/DSW DTD. 13/03/1998 OF THE 2ND RESPONDENT.

EXT.P2: COPY OF THE MEMORANDUM OF CHARGES AND STATEMENT OF ALLEGATIONS DTD.2/02/2000 ISSUED TO THE PETITIONER.

EXT.P3: COPY OF THE REPLY DTD. 15/04/2000 SUBMITTED BY THE PETITIONER IN ANSWER TO EXHIBIT P2.

EXT.P4: COPY OF THE PROCEEDINGS SOF THE ENQUIRY OFFICER DTD. 7/03/03.

EXT.P5: COPY OF THE SHOW CAUSE NOTICE DTD. 27/05/06 ISSUED BY THE 1ST RESPONDENT.

EXT.P6: COPY OF THE REPLY DTD. 16/06/06 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXT.P7: COPY OF THE ORDER ISSUED BY THE 1ST RESPONDENT REMOVING THE PETITIONER FROM SERVICE.

EXT.P8; COPY OF THE CONCURRENCE ORDER ISSUED BY THE PUBLIC SERVICE COMMISSION.

EXT.P9: COPY OF THE ORDER DTD. 26/12/01 ISSUED BY THE 2ND RESPONDENT.

EXT.P10; COPY OF THE ORDER DTD. 18/01/02 ISSUED BY THE 1ST RESPONDENT.

EXT.P11: COPY OF THE JUDGMENT OF THIS HONOURABLE COURT DTD. 16/09/02 IN W.A.729/02.

..2/-

EXT.P12: COPY OF THE ORDER DTD. 30/03/04 ISSUED BY THE 1ST RESPONDENT.

EXT.P13: COPY OF THE ORDER PASSED BY THE 1ST RESPONDENT DTD. 26/04/05.

EXT.P14: COPY OF THE LETTER ISSUED BY THE MANAGER, KSFC, THRISSUR.

EXT.P15; COPY OF THE DOCUMENT ISSUED BY THE DISTRICT TREASURY OFFICER, WAYANAD.

EXT.P16; COPY OF THE MEDICAL REPORT AND LIST MEDICAL EXPENSES INCURRED BY THE PETITIONER.

1ST RESPONDENT'S EXHIBIT:

EXT.R1(A): COPY OF THE G.O.DTD. 14/07/1997.

/TRUE COPY/

P.S.TO JUDGE

KSS

Antony Dominic, J.

==========

W.P(C).No.15473 of 2007

==========

Dated this the 2nd day of August, 2007.

JUDGMENT

Petitioner was appointed as Zilla Sainik Welfare Officer with effect from 22.7.1997 and was removed from service by Ext.P7 order dated 17.5.2007 and this Writ Petition is filed seeking to quash Ext.P7 and for directing the respondents to reinstate him in service.

2. Facts of this case are that the Government had introduced a scheme for distribution of monthly financial assistance to the veterans of the Second World War and the petitioner was an officer, who was in charge of distribution of monthly financial assistance to the beneficiaries of the scheme. Alleging that he had committed certain misconducts, Ext.P2 memo of charges and statement of allegations were issued to the petitioner and in response thereto, denying the allegations against him, petitioner submitted Ext.P3 written statement. It is seen that thereafter, an Enquiry Officer was appointed and Ext.P4

is the report of enquiry submitted by the Enquiry Officer finding that the petitioner is guilty of charge Nos. 1 and 2 and charge No.3 to the extent that he had kept a huge Government money with him. He was also found guilty of charge No.4 to the extent that he had failed to discharge his duties honourably and responsibly as expected of a Government servant. Accepting the enquiry report, without affording an opportunity to the petitioner to file representations against the findings in the report, the Disciplinary Authority proceeded to issue Ext.P5 show cause notice proposing to impose punishment of removal from service in terms of the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960. Contending that the findings of the Enquiry Officer are perverse and that he is liable to be exonerated, petitioner submitted Ext.P6 reply. But however, petitioner was removed from service by Ext.P7 order of the first respondent. It is challenging Ext.P7 that this Writ Petition is filed as stated above.

3. Counter affidavit has been filed by the first respondent contending that misconducts have been proved against the petitioner in a properly conducted enquiry and that the

punishment imposed on the petitioner is proportionate to the misconducts so proved.

4. The only point that was urged at the time of hearing is regarding the propriety of the enquiry that was conducted against the petitioner. It is stated that in the matter of enquiry, there has been complete violation of Rule 15 of Kerala Civil Services (Classification, Control and Appeal) Rules and therefore, the enquiry proceedings deserve to be invalidated.

5. Senior counsel made reference to Ext.P4 enquiry report, which discloses that at the commencement of the enquiry, petitioner was asked by the Enquiry Officer as to whether he received copy of the charges and statement of allegations in respect of the charges and submited his explanation. Thereafter, he was asked if he has anything further to add before proceeding with the oral enquiry. To this, apparently, the petitioner responded in the negative. It appears that recording the above statement of the petitioner and without doing anything more, enquiry has been closed and the Enquiry Officer proceeded to draw the report finding the petitioner guilty. It is seen that none of the procedure laid down in Rule 15 of the Kerala Civil

Services (Classification, Control and Appeal) Rules has been complied with. There has not been any evidence let in by the Department to prove the guilt nor was there any occasion for the petitioner to rebut any such evidence. Similarly, petitioner also did not adduce any evidence. On the other hand, the Enquiry Officer in a hurried manner proceeded to conclude the enquiry and submitted report finding him guilty. In my view, learned senior counsel is justified in his submission that in the matter of enquiry, there has been a total violation of Rule 15 of Kerala Civil Services (Classification, Control and Appeal) Rules and on that ground itself, the enquiry deserves to be invalidated and I do so. Consequently Ext.P7 order will also stand quashed.

6. However, for the only reason that the enquiry has been invalidated for non compliance with procedure laid down, petitioner is not liable to be exonerated of the charges. It is a case where Ext.P2 memo of charges was issued to the petitioner and the petitioner has submitted his written statement, Ext.P3. Now that the enquiry report and the consequential order Ext.P7 are already quashed, the Disciplinary Authority is entitled to proceed with the disciplinary action. Therefore, petitioner will be

reinstated in service and the Disciplinary Authority, first respondent, is entitled to take further action as it deems fit in the matter of continuing the disciplinary proceedings.

With this direction, this Writ Petition is disposed of.

Antony Dominic,
Judge.

ess 2/8